

UNITED STATES OF AMERICA,

Plaintiff,

v.

WELLSFORD, INC.,

Defendant.

Judge \_\_\_\_\_

## CONSENT DECREE

## TABLE OF CONTENTS

I. <u>BACKGROUND</u> .....	3
II. <u>JURISDICTION</u> .....	4
III. <u>PARTIES BOUND</u> .....	4
IV. <u>DEFINITIONS</u> .....	4
V. <u>STATEMENT OF PURPOSE</u> .....	6
VI. <u>PAYMENT OF RESPONSE COSTS</u> .....	6
VII. <u>RELEASE AND WAIVER OF SECTION 107(l) LIEN</u> .....	7
VIII. <u>FAILURE TO COMPLY WITH CONSENT DECREE</u> .....	7
IX. <u>COVENANT NOT TO SUE BY PLAINTIFF</u> .....	8
X. <u>RESERVATION OF RIGHTS BY UNITED STATES</u> .....	8
XI. <u>DUE CARE/COOPERATION</u> .....	9
XII. <u>COVENANT NOT TO SUE BY SETTLING DEFENDANTS</u> .....	10
XIII. <u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u> .....	11
XIV. <u>ACCESS</u> .....	11
XV. <u>NOTICE TO SUCCESSORS IN INTEREST</u> .....	12
XVI. <u>CERTIFICATION</u> .....	13
XVII. <u>NOTICES AND SUBMISSIONS</u> .....	13
XVIII. <u>RETENTION OF JURISDICTION</u> .....	14
XIX. <u>INTEGRATION/APPENDICES</u> .....	14
XX. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	14
XXI. <u>SIGNATORIES/SERVICE</u> .....	14
XXII. <u>FINAL JUDGMENT</u> .....	15

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WELLSFORD, INC.,

Defendant.

Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a), seeking injunctive relief regarding the cleanup of the Recticon/Allied Steel Site in Parkerford, Chester County, Pennsylvania ("Site"), and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site. The Site is comprised of approximately 4.7 acres. Defendant owns an approximate 1.8 acre portion of the Site ("the Property").

B. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded

annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant, Wellsford, Inc.

j. "Plaintiff" shall mean the United States.

k. "Property" shall mean the 1.8 acre "Recticon" portion of the Site, currently owned by Settling Defendant.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendant" shall mean Wellsford, Inc.

n. "Site" shall mean the Recticon/Allied Steel Superfund Site, encompassing approximately 4.7 acres, located at Parkerford, East Coventry Township, Chester County, Pennsylvania, and depicted generally on the map attached as Appendix A..

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

p. "Existing Contamination" shall mean:

1. any hazardous substances, pollutant or contaminant, present or existing on or under the Property as of the effective date of this Consent Decree;

2. any hazardous substances, pollutant or contaminant, that migrated from the Property prior to the effective date of this Consent Decree; and

3. any hazardous substances, pollutant or contaminant, presently at the Site that migrate onto or under or from the Property after the effective date of this Consent Decree.

q. "Successor in Interest or Assign" shall mean any person who acquires an interest in the Property or portion thereof (including but not limited to an ownership or leasehold interest) and who signs an Agreement and Certification of Successor in Interest or Assign, the form of which is attached as Appendix B hereto. The term "Successor in Interest or Assign" shall

include the Successor in Interest's or Assign's heirs, corporate successors, or assigns, commissioners, officers, directors, employees and agents. Nothing in the Agreement and Certification of Successor in Interest or Assign or this Consent Decree shall prohibit a lessee, sublessee or any person conducting activities at the Property from entering into and signing the Agreement and Certification of Successor in Interest or Assign.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment of \$20,000 to address its potential liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservation of Rights by United States in Section X.

#### **VI. PAYMENT OF RESPONSE COSTS**

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the EPA \$20,000.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2004v00560, the EPA Region III and Site Spill ID Number PAD002353969, and DOJ Case Number 90-11-2-902/2. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

Office of the United States Attorney  
Financial Litigation Unit  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106-4476

7. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions) and to:

Barbara Borden  
Regional Financial Management Officer  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103; and

Docket Clerk

Office of Regional Counsel (3RC00)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Recticon/Allied Steel Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

#### **VII. RELEASE AND WAIVER OF SECTION 107(I) LIEN**

9. Subject to the Reservation of Rights in Section IX of this Consent Decree, upon payment of the amount specified in Section VI, (Payment of Response Costs), EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(I) of CERCLA, 42 U.S.C. § 9607(I), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Defendant acquired ownership of the Property.

#### **VIII. FAILURE TO COMPLY WITH CONSENT DECREE**

10. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 5 by the required due date, interest shall continue to accrue on the unpaid balance through the date of payment. Interest shall accrue at the same rate set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

11. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number PAD002353969, and DOJ Case Number 90-11-2-902/2, and shall be sent to:

United States Environmental Protection Agency, Region III  
Attention: Superfund Accounting

P.O. Box 360515  
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions) and to:

Barbara Borden  
Regional Financial Management Officer  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103; and

Docket Clerk  
Office of Regional Counsel (3RC00)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

#### **IX. COVENANT NOT TO SUE BY PLAINTIFF**

14. Covenant Not to Sue by United States. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for Existing Contamination. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VIII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of their obligations under this Consent Decree.



This covenant not to sue extends only to Settling Defendant and does not extend to any other person, except as provided in Paragraph 15 (Covenant as to Successors in Interest or Assigns).

15. Covenant as to Successors in Interest or Assigns. Except as specifically provided in Paragraph 16 of Section X (Reservation of Rights by United States with regard to Successors in Interest or Assigns), the United States covenants not to sue or take any other civil or administrative action (including but not limited to imposing or enforcing any liens on the Property pursuant to Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607 (l) or 9607(r)), against a Successor in Interest or Assign for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to Existing Contamination, and to release any lien that it may have on the Property under Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) or 9607(r), as a result of response actions conducted at the Property, if prior to or simultaneously with the sale, lease or conveyance of the Property or portion of the Property, the Successor in Interest or Assign signs the Agreement and Certification of Successor in Interest (the form of which is attached as Appendix B). This covenant not to sue is subject to the following conditions:

a. The Agreement and Certification of Successor in Interest or Assign signed by the Successor in Interest or Assign must exactly duplicate the form attached as Appendix B, unless otherwise agreed by EPA, and thereby the Successor in Interest or Assign certifies and agrees to the following:

i. The Successor in Interest or Assign must certify to EPA that to the best of its knowledge and belief, it has not caused or contributed to a release or threat of a release of hazardous substances or pollutants or contaminants to, at or from the Site; and that it was not a past owner or operator of the Property or a corporate affiliate of any past owner or operator of the Property;

ii. With respect to Existing Contamination, the Successor in Interest or Assign shall agree to exercise due care at the Property, or the portion of the Property it will lease, own or otherwise have an interest in;

iii. With respect to Existing Contamination, the Successor in Interest or Assign shall agree to comply with all applicable local, state, and federal laws and regulations;

iv. The Successor in Interest or Assign shall acknowledge that it is purchasing Property where response actions may be required, and that the implementation of response actions at the Property may interfere with its use of the Property, and may require closure of its operations or a part thereof. The Successor in Interest or Assign shall agree to cooperate fully with EPA in the implementation of response actions at the Site and not to interfere with such response actions. EPA will, consistent with its responsibilities under applicable law, use reasonable efforts to avoid or minimize any interference with the operations of Successor in Interest or Assign, or the operations of the Successor in Interest's or Assign's

lessees, sublessees, contractors and agents, by implementation of such response actions;

v. The Successor in Interest or Assign shall agree that in the event the Successor in Interest or Assign becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property, or the portion of the Property it owns, leases or otherwise has an interest in that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, it will immediately take all appropriate action as required by law to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release; and

vi. The Successor in Interest or Assign shall agree to the terms and conditions of this Consent Decree set forth in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign), Paragraph 17 of Section X (Reservation of Rights by United States with regard to Successors in Interest or Assigns), Paragraph 27 of Section XIII (Effect of Settlement/Contribution Protection), and Sections IV (Definitions) and XVIII (Retention of Jurisdiction) of this Consent Decree to the extent they are specifically applicable to a Successor in Interest or Assign.

b. With respect to a Successor in Interest or Assign which purchases, leases or otherwise obtains an interest in all or any portion of the Property from the Settling Defendant, this covenant not to sue shall take effect upon: (i) tender of payment by Successor in Interest or Assign at closing for the transfer of the Property, or portion thereof, that Successor in Interest or Assign is acquiring; and (ii) the receipt by EPA of an Agreement and Certification of Successor in Interest or Assign setting forth the foregoing certifications, representations, and agreements, in the form attached as Appendix B, which has been fully executed and certified by the Successor in Interest or Assign or its authorized corporate official or other representative.

c. For subsequent Successors in Interest or Assigns, which purchase, lease or otherwise obtain an interest in all or any portion of the Property from a prior Successor in Interest or Assign, this covenant not to sue shall take effect upon the receipt by EPA of an Agreement and Certification of Successor in Interest or Assign setting forth the foregoing certifications, representations, and agreements, in the form attached as Appendix B, which has been fully executed and certified by the Successor in Interest or Assign or its authorized corporate official or other representative.

d. In the event any representation or certification in Paragraph 7(a) of the Agreement and Certification of Successor in Interest or Assign submitted by a Successor in Interest or Assign (described in subparagraph (a)(i) above) is materially inaccurate or incomplete, the covenant not to sue in this Paragraph 18 shall be null and void with respect to such Successor in Interest or Assign, and the United States reserves all rights it may have against such Successor in Interest or Assign.

e. The covenant not to sue in this Paragraph 15 does not extend to any person other than a Successor in Interest or Assign which has executed the Agreement and Certification of Successor in Interest or Assign, the form of which is attached at Appendix B.

#### **X. RESERVATION OF RIGHTS BY UNITED STATES**

16. Reservation of Rights with regard to Settling Defendant. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

f. liability resulting from exacerbation by the Settling Defendant, its successors, assignees, lessees or sublessees, of Existing Contamination;

g. With respect to any claim or cause of action asserted by the United States, the Settling Defendant shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

17. Reservation of Rights with regard to Successors in Interest or Assign. The United States reserves, and this Consent Decree is without prejudice to, all rights against a Successor in Interest or Assign with respect to all matters not expressly included within the Covenant Not to Sue by United States in Section IX, Paragraph 15 (Covenant as to Successors in Interest or Assign). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against a Successor in Interest or Assign with respect to:

- a. claims based on failure of a Successor in Interest or Assign to meet a requirement of its Agreement and Certification of Successor in Interest or Assign or an applicable requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by a Successor in Interest or Assign;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- f. liability resulting from exacerbation by a Successor in Interest or Assign, its successors, assignees, lessees or sublessees, of Existing Contamination;
- g. with respect to any claim or cause of action asserted by the United States, a Successor in Interest or Assign shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

## **XI. DUE CARE/COOPERATION**

18. The Settling Defendant understands and acknowledges that certain groundwater and soil contamination remains at the Site. The Settling Defendant shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Defendant recognizes that the EPA's implementation of response actions at the Site may interfere with the Settling Defendant's use of the Property, and may require closure of Settling Defendant's operations or a part thereof. The Settling Defendant agrees to cooperate fully with EPA with respect to the EPA's response actions at the Site and further agrees not to interfere with such activities. EPA agrees, in accordance with its access authorities, to use reasonable efforts to minimize any interference by EPA with the Settling Defendant's operations by such entry and response. In the event the Settling Defendant becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Defendant shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

## **XII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

19. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

20. Except as provided in Paragraph 20 (Waiver of Claims) and Paragraph 24 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16 (c) - (f), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

22. Settling Defendant agrees not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

## **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

23. Except as provided in Paragraph 22, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 20, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with

respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. Contribution Protection with regard to Settling Defendant. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with Existing Contamination at the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

25. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

27. Contribution Protection with regard to Successors in Interest or Assign. A Successor in Interest or Assign which executes the Agreement and Certification of Successor in Interest or Assign (the form of which is attached hereto as Appendix B) shall be entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in the Agreement and Certification of Successor in Interest or Assign and the provisions of this Consent Decree applicable to a Successor in Interest or Assign. The "matters addressed" in this Consent Decree and the Agreement and Certification of Successors in Interest or Assign are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person with respect to Existing Contamination. Contribution protection under this Paragraph shall take effect as to a Successor in Interest or Assign at the same time that the United States' covenant

not to sue takes effect with respect to such Successor in Interest or Assign, as set forth in Paragraph 15 (Covenant as to Successors in Interest or Assign).

#### **XIV. ACCESS**

28. Commencing on the date of lodging of this Consent Decree, Settling Defendant shall, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
  2. Verifying any data or information submitted to the United States;
  3. Conducting investigations relating to contamination at or near the Site;
  4. Obtaining samples;
  5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
  6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents;
  7. Assessing Settling Defendant's compliance with this Consent Decree;
- and
8. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XV. NOTICE TO SUCCESSORS IN INTEREST**

30. Within thirty (30) days after the effective date of this Agreement Settling Defendant shall submit to EPA for review and approval a title notice. This title notice and a copy of this Consent Decree shall be filed with the Recorder of Deeds, Chester County, Pennsylvania, providing notice to all successors-in-title that the Property is part of the Site, that EPA selected a remedy for the Site on June 30, 1993, and that the EPA issued potentially responsible parties a

Unilateral Administrative Order requiring them to implement the remedy. The title notice shall make specific reference to this Agreement and recite Settling Defendant's specific obligation to provide access to the Site pursuant to Section V of this Agreement. Settling Defendant shall record the title notice within thirty (30) days of EPA's written approval of the title notice. Settling Defendant shall provide EPA with a certified copy of the recorded title notice within ten (10) days of recording such notice. Settling Defendant shall not modify or release such title notice without prior written approval of the EPA. A model notice is attached in Appendix C.

31. Settling Defendant shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same consent to EPA's access to the Property.

### **XVI. CERTIFICATION**

32. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### **XVII. NOTICES AND SUBMISSIONS**

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-902/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Robert S. Hasson  
Assistant Regional Counsel (3RC41)



U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

As to Settling Defendant:

Joseph G. Perini  
Chief Executive Officer  
Wellsford, Inc.  
2498 Schuylkill Road  
Parkerford, PA 19457

**XVIII. RETENTION OF JURISDICTION**

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XIX. INTEGRATION/APPENDICES**

33. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Site; "Appendix B" is the Agreement and Certification of Successor in Interest or Assign; and "Appendix C" is a model notice to successors in interest.

**XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XXI. SIGNATORIES/SERVICE**

36. The undersigned representative of a Settling Defendant to this Consent Decree and the Chief/Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to

enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

37. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

38. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XXII. FINAL JUDGMENT**

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
United States District Judge

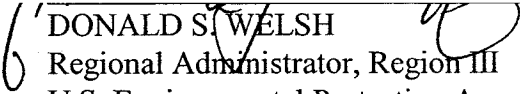
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Wellsford Inc., relating to the Recticon/Allied Steel Superfund Site.

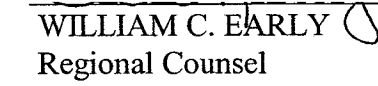
FOR THE UNITED STATES OF AMERICA


\_\_\_\_\_  
BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

\_\_\_\_\_  
JEFFREY D. TALBERT  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

\_\_\_\_\_  
PATRICK L. MEEHAN  
United States Attorney  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
(215) 861-8200

  
DONALD S. WELSH  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

  
WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

  
ROBERT S. HASSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Wellsford, Inc., relating to the Recticon/Allied Steel Superfund Site.

FOR DEFENDANT WELLSFORD, INC.

Date: 4/22/2005

\_\_\_\_\_  
Joseph G. Pereni  
Chief Executive Officer  
Wellsford, Inc.  
1810 W. High St.  
Stowe, PA 19464

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Joseph G. Pereni, Chief Executive Officer  
Title: Chief Executive Officer  
Wellsford, Inc.  
Address: 1810 West High Street  
Stowe, PA 19464

# APPENDIX A (SITE MAP)

The site map illustrates the layout of the Recticon and Allied Steel parcels. The Recticon Parcel on the left contains a factory, office, paved areas, and various wells (W-3, W-4, W-5, W-6, W-7, W-8, W-9, W-10, W-11, W-12, W-13, W-14, W-15, W-16, W-17, W-18, W-19, W-20, W-21, W-22, W-23, W-24, W-25, W-26, W-27, W-28, W-29, W-30, W-31, W-32, W-33, W-34, W-35, W-36, W-37, W-38, W-39, W-40, W-41, W-42, W-43, W-44, W-45, W-46, W-47, W-48, W-49, W-50, W-51, W-52, W-53, W-54, W-55, W-56, W-57, W-58, W-59, W-60, W-61, W-62, W-63, W-64, W-65, W-66, W-67, W-68, W-69, W-70, W-71, W-72, W-73, W-74, W-75, W-76, W-77, W-78, W-79, W-80, W-81, W-82, W-83, W-84, W-85, W-86, W-87, W-88, W-89, W-90, W-91, W-92, W-93, W-94, W-95, W-96, W-97, W-98, W-99, W-100). The Allied Steel Parcel on the right contains a fabrication shop, crane area, gravel area, and various wells (W-1, W-2, W-3, W-4, W-5, W-6, W-7, W-8, W-9, W-10, W-11, W-12, W-13, W-14, W-15, W-16, W-17, W-18, W-19, W-20, W-21, W-22, W-23, W-24, W-25, W-26, W-27, W-28, W-29, W-30, W-31, W-32, W-33, W-34, W-35, W-36, W-37, W-38, W-39, W-40, W-41, W-42, W-43, W-44, W-45, W-46, W-47, W-48, W-49, W-50, W-51, W-52, W-53, W-54, W-55, W-56, W-57, W-58, W-59, W-60, W-61, W-62, W-63, W-64, W-65, W-66, W-67, W-68, W-69, W-70, W-71, W-72, W-73, W-74, W-75, W-76, W-77, W-78, W-79, W-80, W-81, W-82, W-83, W-84, W-85, W-86, W-87, W-88, W-89, W-90, W-91, W-92, W-93, W-94, W-95, W-96, W-97, W-98, W-99, W-100). The map also shows infrastructure such as Route 724, Wells Road, and a railroad. A legend in the top right corner defines the symbols used for wells, valves, catch basins, storm water pipes, and soil boring locations. A north arrow and scale bar are located in the bottom right corner.

Recticon Parcel

Allied Steel Parcel

EXPLANATION

- ☼ Pump Test Observation Well
- ☼ Production Well
- Well
- Headwall (H/W)
- Gas Valve (GV)
- Catch Basin (CB)
- Storm Water Pipe
- Soil Boring Location

Scale in Feet

Reclon / Allied Steel St  
Parker Ford, Pennsylvania  
MARCH 1991

**APPENDIX B**  
**(AGREEMENT AND CERTIFICATION OF**  
**SUCCESSOR IN INTEREST OR ASSIGN)**



## **APPENDIX B**

### **AGREEMENT AND CERTIFICATION OF SUCCESSOR IN INTEREST OR ASSIGN**

#### **I. GENERAL PROVISIONS**

1. The Consent Decree and all appendices attached thereto between the United States of America on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and Wellsford, Inc. ("Settling Defendant") entered by the United States District Court for the Eastern District of Pennsylvania in United States v. Wellsford, Inc., Civil Action No. \_\_\_\_\_ (the "Consent Decree"), a copy of which is attached as Appendix A to this Agreement and Certification of Successor in Interest or Assign ("Agreement"), is incorporated by reference herein.

2. Unless otherwise expressly provided in Section IV (Definitions) of the Consent Decree, the terms used in this Agreement which are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, ("CERCLA") or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. The definitions contained in Section IV of the Consent Decree shall apply to this Agreement as if fully set forth herein. These definitions include, but are not limited to:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants or contaminants present or existing on or under the Property, as such property is defined herein, as of the effective date of the Consent Decree;

ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of the Consent Decree; and

iii. any hazardous substances, pollutants or contaminants present at the Site that migrate onto or under or from the Property after the effective date of the Consent Decree, but only if the Successor in Interest or Assign did not or does not cause or exacerbate such migration.

c. "Property" shall mean that portion of the Site that was owned by the Settling Defendant as of the effective date of the Consent Decree. The Property is located in Parkerford, East Coventry Township, Chester County, Pennsylvania, and is designated by parcel number UPI # 18-5-84 in the Office of the Chester County Recorder of Deeds.

d. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901- 6991(i), (also known as the Resource Conservation and Recovery Act).

e. "Settling Defendant" shall mean Wellsford, Inc.

f. "Site" shall mean the Recticon/Allied Steel Superfund Site, encompassing approximately 4.7 acres, located at Parkerford, East Coventry Township, Chester County, Pennsylvania, and depicted generally on the map attached as Appendix B. The Site is generally shown on the map included in Appendix B.

g. "Successor in Interest or Assign" shall mean any person who acquires an interest in the Property or portion thereof (including but not limited to an ownership or leasehold interest) and who signs this Agreement. The term "Successor in Interest or Assign" shall include the Successor in Interest's or Assign's heirs, corporate successors or assigns, commissioners, officers, directors, employees and agents. Nothing in this Agreement or the Consent Decree shall prohibit a lessee, sublessee or any person conducting activities at the Property from entering into and signing this Agreement.

h. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

3. The undersigned Successor in Interest or Assign hereby provides notice to EPA of its intent to acquire a right, title or interest in the Property or portion thereof (including but not limited to an ownership or leasehold interest). The purpose of this Agreement is to settle and resolve, subject to provisions of this Agreement, the potential liability of the undersigned Successor in Interest or Assign for Existing Contamination that might otherwise result from the Successor in Interest or Assign acquiring a right, title or interest in the Property or portion thereof. Entry of the undersigned Successor in Interest or Assign into this Agreement and the actions undertaken by the Successor in Interest or Assign in accordance with the Agreement shall not constitute an admission of any liability by the Successor in Interest or Assign.

4. If the United States, on behalf of EPA, brings an action to enforce this Agreement the undersigned Successor in Interest or Assign shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time. However, if the action brought by the United States is litigated and the court issues an order ruling against the United States, then the Successor in Interest or Assign is not required to reimburse the United States for costs related to the issues upon which the United States did not prevail.

## **II. PARTIES BOUND**

5. This Agreement shall be binding upon EPA and the undersigned Successor in Interest or Assign and its heirs, corporate successors or assigns, commissioners, officers, directors, employees, and agents. The undersigned Successor in Interest or Assign agrees to be bound by all applicable provisions of the attached Consent Decree. Each signatory to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party represented by him or her.

6. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the United States may have against any person, firm, corporation, or other entity not a party to this Agreement. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Successor in Interest or Assign to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law.

### **III. CERTIFICATIONS & AGREEMENTS**

7. The undersigned Successor in Interest or Assign hereby certifies and agrees to the following:

a. The Successor in Interest or Assign hereby certifies to EPA that to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants to, at or from the Site; and that it was not a past owner or operator of the Property or a corporate affiliate of any past owner or operator of the Property;

b. With respect to Existing Contamination, the Successor in Interest or Assign agrees to exercise due care at the Property, or the portion of the Property it will lease, own or otherwise have an interest in;

c. With respect to Existing Contamination, the Successor in Interest or Assign agrees to comply with all applicable local, state, and federal laws and regulations;

d. The Successor in Interest or Assign acknowledges that it is purchasing Property where response actions may be required, and that the implementation of response actions at the Property may interfere with its use of the Property, and may require closure of its operations or a part thereof. The Successor in Interest or Assign agrees to cooperate fully with EPA in the implementation of response actions at the Site and not to interfere with such response actions. EPA will, consistent with its responsibilities under applicable law, use reasonable efforts to avoid or minimize any interference with the operations of Successor in Interest or Assign, or the operations of the Successor in Interest's or Assign's lessees, sublessees, contractors and agents, by implementation of such response actions;

e. The Successor in Interest or Assign agrees that in the event the Successor in Interest or Assign becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property, or the portion of the Property it owns, leases or otherwise has an interest in, that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, it will immediately take all appropriate action as required by law to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release; and

f. The Successor in Interest or Assign shall agree to the terms and conditions of the Consent Decree set forth in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign), Paragraph 17 of Section X (Reservation of Rights by United States with regard to Successors in Interest or Assigns), Paragraph 27 of Section XIII (Effect of Settlement/Contribution Protection), and Sections IV (Definitions) and XVIII (Retention of Jurisdiction) of this Consent Decree to the extent they are specifically applicable to a Successor in Interest or Assign.

### **IV. COVENANT NOT TO SUE BY UNITED STATES**

8. Except as specifically provided in Paragraph 17 of Section X (Reservation of Rights by United States with regard to Successors in Interest or Assigns) of the Consent Decree as described in Section V of this Agreement, the undersigned Successor in Interest or Assign is

entitled to the Covenant Not to Sue by United States set forth in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree, which provides that: the United States covenants not to sue or take any other civil or administrative action (including but not limited to imposing or enforcing any liens on the Property pursuant to Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607 (l) or 9607(r)), against a Successor in Interest or Assign for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to Existing Contamination, and to release any lien that it may have on the Property under Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) or 9607(r), as a result of response actions conducted at the Property, if the Successor in Interest or Assign signs this Agreement prior to or simultaneously with the sale, lease or conveyance of the Property, or portion of the Property.

9. As provided by Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree, the covenant not to sue described in Paragraph 8, above, shall take effect as follows:

a. With respect to a Successor in Interest or Assign which purchases, leases or otherwise obtains an interest in all or any portion of the Property from the Settling Defendant, the covenant not to sue shall take effect upon: (i) tender of payment by Successor in Interest or Assign at closing for the transfer of the Property, or portion thereof, that Successor in Interest or Assign is acquiring; and (ii) the receipt by EPA of this Agreement setting forth the certifications, representations, and agreements contained herein, which has been fully executed and certified by the Successor in Interest or Assign or its authorized corporate official or other representative.

b. For subsequent Successors in Interest or Assigns, which purchase, lease or otherwise obtain an interest in all or any portion of the Property from a prior Successor in Interest or Assign, this covenant not to sue shall take effect upon the receipt by EPA of this Agreement setting forth the certifications, representations, and agreements contained herein, which has been fully executed and certified by the Successor in Interest or Assign or its authorized corporate official or other representative.

10. As provided in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree, in the event any representation or certification in Paragraph 7(a) of this Agreement submitted by a Successor in Interest or Assign is materially inaccurate or incomplete, the Covenant Not to Sue by the United States in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree shall be null and void with respect to such Successor in Interest or Assign, and the United States reserves all rights it may have against such Successor in Interest or Assign.

11. The Covenant Not to Sue by United States in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree does not extend to any person other than a Successor in Interest or Assign which has executed this Agreement.

#### **V. RESERVATION OF RIGHTS**

12. As specifically provided in Paragraph 17 of Section X (Reservation of Rights with regard to Successors in Interest or Assign) of the Consent Decree, the United States reserves, and this Agreement is without prejudice to, all rights against a Successor in Interest or Assign with respect to all matters not expressly included within the Covenant Not to Sue by United States in

Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree as described in Section IV of this Agreement. As set forth in Paragraph 17 of the Consent Decree, notwithstanding any other provision of this Agreement or the Consent Decree, the United States reserves all rights against a Successor in Interest or Assign with respect to:

- a. claims based on a failure of the undersigned Successor in Interest or Assign to meet a requirement of this Agreement or an applicable requirement of the Consent Decree;
- b. any liability resulting from exacerbation by the undersigned Successor in Interest or Assign, its corporate successors, assigns, lessees or sublessees, of Existing Contamination;
- c. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property or Site after the effective date of the Consent Decree, not within the definition of Existing Contamination;
- d. any liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- e. criminal liability; and
- f. any liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments incurred by federal agencies other than EPA.

13. With respect to any claim or cause of action asserted by the United States, the Successor in Interest or Assign shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

#### **VI. COVENANT NOT TO SUE BY SUCCESSOR IN INTEREST OR ASSIGN**

14. In consideration of the Covenant not to Sue by the United States in Paragraph 15 of Section IX (Covenant as to Successor in Interest or Assign) of the Consent Decree, the undersigned Successor in Interest or Assign hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site, the Consent Decree, or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, 9612 or 9613, or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

15. Notwithstanding Paragraph 14, immediately above, the Successor in Interest or Assign reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (including its authorized officers, employees, or representatives), not including oversight or approval of the Successors in Interest or Assign's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA

or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

16. The covenants not to sue set forth in Paragraph 14, above, shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations described in Paragraphs 12(b) through (f) of this Agreement, but only to the extent that the Successor in Interest's or Assign's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

17. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Agreement may have under applicable law. Successor in Interest or Assign expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

#### **VII. CONTRIBUTION PROTECTION**

18. As specifically provided in Paragraph 27 of Section XIII (Contribution Protection as to Successors in Interest or Assign) of the Consent Decree, the undersigned Successor in Interest or Assign shall be entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement and the provisions of the Consent Decree applicable to a Successor in Interest or Assign. The "matters addressed" in this Agreement and the Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person with respect to Existing Contamination. Contribution protection under this Paragraph shall take effect as to a Successor in Interest or Assign at the same time that the United States' covenant not to sue takes effect with respect to such Successor in Interest or Assign, as set forth in Paragraphs 8 and 9 of this Agreement.

19. The Successor in Interest or Assign agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

20. The Successor in Interest or Assign also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify in writing the United States within ten (10) days after service of the complaint on it.

#### **VIII. DUE CARE, ACCESS AND COOPERATION**

21. With regard to the Property that is owned or controlled by Successor in Interest or Assign, Successor in Interest or Assign shall, commencing on the effective date of this Agreement as provided in Paragraph 29, and thereafter, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Property for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;

- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to the release or threatened release of hazardous substances at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Assessing Successor in Interest or Assign's compliance with this Agreement and the Noznesky Consent Decree; and
- g. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Agreement or the Consent Decree.

Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulation, including any amendments thereto.

22. Successor in Interest or Assign understands and acknowledges that certain groundwater and soil contamination remains at the Site. Successor in Interest or Assign shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Successor in Interest or Assign recognizes that EPA's implementation of response actions at the Site may interfere with the Settling Defendant's use of the Property, and may require closure of Successor in Interest's or Assign's operations or a part thereof. Successor in Interest or Assign agrees to cooperate fully with EPA with respect to EPA's response actions at the Site and further agrees not to interfere with such activities. EPA agrees, in accordance with its access authorities, to use reasonable efforts to minimize any interference by EPA with Successor in Interest's or Assign's operations by such entry and response. In the event the Successor in Interest or Assign becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Successor in Interest or Assign shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

23. The Successor in Interest or Assign shall ensure that any of its agents or representatives performing activities at the Site comply with the requirements set forth in this Section VIII of the Agreement.

24. The Successor in Interest or Assign shall ensure that lessees and sublessees of the Property shall provide the same access and cooperation including, but not limited to, complying with any Institutional Controls set forth in this Section. The Successor in Interest or Assign shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases or

subleases of the Property or an interest in the Property are consistent with this Section of the Agreement.

#### **IX. NOTICES AND SUBMISSIONS**

25. This signed Agreement shall be sent to the EPA Region III Office of Regional Counsel by the undersigned Successor in Interest or Assign within ten (10) days after the execution of this Agreement by the Successor in Interest or Assign.

26. Notices and submissions to EPA required by this Agreement shall be sent to:

Regional Administrator (3RA00)  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

Robert S. Hasson (3RC41)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The addresses set forth above may be modified by EPA by filing a written notice containing the new addresses and the legal description of the Property with the Office of the Prothonotary, Chester County, Pennsylvania, and submitting a copy of such notice to the undersigned Successor in Interest or Assign.

#### **X. MODIFICATION**

27. No modification shall be made to the terms of this Agreement without the express written consent of both EPA and the undersigned Successor in Interest or Assign.

#### **XI. TERMINATION**

28. The obligations imposed upon the undersigned Successor in Interest or Assign by this Agreement shall terminate at such time as Successor in Interest or Assign no longer holds any interest in the Property or portion thereof. The protections afforded by Sections IV, VI and VII of this Agreement shall survive termination of this Agreement.

#### **XII. EFFECTIVE DATE**

29. This Agreement shall be effective upon execution of a copy of this Agreement by the undersigned Successor in Interest or Assign and by EPA, if required by Paragraph 9 of this Agreement, and after transfer of an interest in all or any portion of the Property to the Successor in Interest or Assign ("effective date"); and shall be binding in all respects upon the parties hereto.



**IT IS SO AGREED BY THE UNDERSIGNED SUCCESSOR IN INTEREST OR  
ASSIGN:**

Date:

Name:

Position:

Address:

Telephone:

---

Signature

**APPROVED AND CONSENTED TO (if required under Paragraph 9): UNITED  
STATES ENVIRONMENTAL PROTECTION AGENCY**

Date:

---

Regional Administrator

United States Environmental Protection Agency

Region III

**APPENDIX C**  
**(NOTICE OF ACCESS OBLIGATIONS**  
**AND USE OF PROPERTY)**

---

**Tax Parcel Number:** UPI#18-5-84

**Address:** 2498 New Schuylkill Road, Parkerford, PA 19457; East Coventry Township, Chester County, PA

**Prepared by:**

**NOTICE OF ACCESS OBLIGATIONS AND USE OF PROPERTY**

This Notice of Access Obligations and Use of Property is made this \_\_\_\_ day of \_\_\_\_ 2005, by Wellsford, Inc. ("Owner"), having an address of 2498 New Schuylkill Road, Parkerford, PA 19457; East Coventry Township, Chester County, PA.

**I. RECITALS**

WHEREAS, Owner is the owner of real property, tax parcel number UPI #18-5-84, also known as 2498 New Schuylkill Road, Parkerford, PA 19457; East Coventry Township, Chester County, PA ("the Property"), which is a portion of the Recticon/Allied Steel Superfund Site ("Site"), a former silicon wafer manufacturing facility, located on approximately 1.8 acres in Parkerford, East Coventry Township, Chester County, Pennsylvania. A legal description of the Property is attached hereto as Exhibit A. The Site is roughly depicted on the map attached hereto as Exhibit B; and

WHEREAS, "hazardous substances," as that term is defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601(14), were disposed of at the Property during the silicon manufacturing and/or other operations at the Site. In particular, trichloroethylene ("TCE"),

associated with former operations at the Property, has been found in soils and groundwater at and beneath the Property ;

WHEREAS, from approximately 1987 to the present, the United States Environmental Protection Agency ("EPA") has performed Response Actions at the Site, pursuant to Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606. The purpose of EPA's Response Actions has been to protect public health or welfare or the environment from an imminent and substantial danger caused by a release or threatened release of hazardous substances at or from the Site;

WHEREAS, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41015;

WHEREAS, on June 30, 1993, EPA issued a Record of Decision ("ROD") for the Site, on which the Commonwealth of Pennsylvania ("Commonwealth") concurred. Notice of the ROD was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD described the Remedial Action ("RA") which EPA selected for the Site. In recognition of the area-specific conditions defined by a Remedial Investigation/Feasibility Study ("RI/FS"), the ROD provided for specific remedial activities for each area, namely, excavation and off-Site disposal of contaminated soils, groundwater remediation, installation of a municipal water line, and long-term groundwater monitoring;

WHEREAS, on March 24, 1994, EPA issued an Administrative Order for Remedial Design/Remedial Action (Docket No. III-94-16-DC) ("Order"), to Respondents Highview Gardens, Inc., Allied Steel Products Corporation, Allied Steel Products Corporation of

Pennsylvania, and Rockwell International Corporation ("Rockwell"), ordering them to implement the RA selected by the ROD;

WHEREAS, Rockwell and its successor Conexant Systems, Inc. have performed certain parts of the RA at the Site in compliance with the Order;

WHEREAS, on August 29, 1997, EPA issued a ROD Amendment which modified two requirements selected by the ROD, namely, the requirement to excavate and dispose of off-Site soils contaminated with trichloroethylene ("TCE") from the Property and the requirement to achieve background levels for TCE as the groundwater clean-up performance standards in accord with the relevant and appropriate requirements of the Commonwealth. The ROD Amendment selected the following changes to the RA: 1) replacement of the requirement for excavation and off-Site disposal of contaminated soils from the Property with institutional controls that limited future use of the Property, and 2) changing the groundwater clean-up standards to the Maximum Contaminant Limits ("MCLs") established under Sections 300g-1 of the Safe Drinking Water Act, 42 U.S.C. §1412, and 40 C.F.R. Part 141;

WHEREAS, on February 2, 1998, the Director of EPA Region III Hazardous Site Cleanup Division approved a funding request for a removal action at the Site. Pursuant to this funding request, in or around March and April, 1998, EPA conducted a removal action to excavate and dispose of off-Site contaminated soils from the Site;

WHEREAS, on or around July 25, 2001, Owner purchased the Property from Highview Gardens, Inc.;

WHEREAS, on September 10, 2004, as part of EPA's Five-Year Review, conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621, EPA issued an Explanation of

Significant Difference ("ESD"), pursuant to Section 117(c) of CERCLA, 42 U.S.C. § 9617(c), and Section 300.435(c)(2)(i) of the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.435(c)(2)(i), whereby EPA eliminated the requirement of implementation of the institutional controls selected by the ROD Amendment;

WHEREAS, on or about \_\_\_\_\_, 2005, EPA and Owner entered into a Consent Decree that provides EPA representatives certain access to the Property and provides for due care with regard to any use of the Property that will affect Existing Contamination. The Consent Decree is attached hereto as Exhibit C; and

WHEREAS, in the Consent Decree, Owner has agreed to (a) authorize access to the Site to EPA and its authorized officers, employees, representatives and all other persons performing any Response Actions under EPA oversight, for all purposes associated with the Response Actions, to the extent such access is controlled by Owner, and (b) exercise due care at the Property with respect to Existing Contamination, including, but not limited to (1) the limitation of activities on the Property so as to avoid exacerbating, or causing releases of, Existing Contamination, especially TCE; and (2) such actions, including sampling, testing, and clean-up actions, as may be necessary to ensure that Existing Contamination in soils and groundwater beneath the surface of the Property, is not released into the environment and does not pose any threat to human health; and

WHEREAS, the Consent Decree defines "Existing Contamination" as: (1) any hazardous substance, pollutant or contaminant, present or existing on or under the Property as of the effective date of this Consent Decree; and (2) any hazardous substances, pollutant or

contaminant, presently at the Site that migrate onto or under the Property after the effective date of this Consent Decree; and

WHEREAS, Owner wishes (a) to cooperate fully with EPA in the implementation of Response Actions at the Site, and (b) to exercise due care at the Property with respect to Existing Contamination.

II. DECLARATION OF ACCESS OBLIGATIONS, USE OF PROPERTY, AND RESERVATIONS

NOW, THEREFORE, intending to fulfill the terms of the Consent Decree, the Owner files this notice that use of the Property is subject to the advisories set forth below.

1. Purpose: It is the purpose of this instrument to provide notice of Owner's obligations under the Consent Decree. These obligations are (1) to provide EPA with access in order to implement and/or monitor Response Actions at the Property; and (2) to assure that the Property will be used only for purposes which will not cause the release of Existing Contamination.

2. Access: The following advisory applies to access to the property by EPA:

The owner of the Property may be asked to provide EPA, and any appropriate personnel and equipment EPA deems necessary, with access at reasonable times to the Property for the purpose of conducting Response Actions ;

3. Use of Property: The following advisories apply to use of the Property:

The owner of the Property may be asked to cooperate fully with EPA in the implementation of Response Actions at the Site and further agrees not to interfere with such Response Actions;

The owner of the Property shall exercise due care at the Property with respect to any Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations;



The owner of the Property shall limit its activities at the Site so as to avoid exacerbating, or causing releases of, any Existing Contamination;

The owner of the Property shall take such actions, including sampling, testing, and cleanup actions, as may be necessary to ensure that any Existing Contamination in soils at or beneath the surface of the Property, is not released into the environment and does not pose any threat to human health or the environment;

In the event that the owner of the Property becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an imminent threat to public health or welfare or the environment, the owner of the Property shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release;

Groundwater beneath the Property shall not be used for any purpose unless Owner provides EPA with prior notification in writing.

4. Reserved Rights of Owner: Owner hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the advisory and rights recited herein.
5. Right of Entry provided by Law or Regulation: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access provided by law or regulation.
6. No Public Access and Use: This instrument does not grant any right of access or use to any portion of the Property to the general public.
7. Notice requirements: Owner agrees to include in any instrument conveying any interest in any portion of the Site including, but not limited to, deeds, leases and mortgages, a Disclosure which is in substantially the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A "NOTICE OF ACCESS OBLIGATIONS AND USE OF PROPERTY" AND THE TERMS,

CONDITIONS AND RESTRICTIONS CONTAINED THEREIN, DATED \_\_\_\_\_. THE "NOTICE OF ACCESS OBLIGATIONS AND USE of PROPERTY" WAS RECORDED ON \_\_\_\_\_ IN THE OFFICE OF THE RECORDER OF DEEDS FOR CHESTER COUNTY, PENNSYLVANIA IN BOOK \_\_\_, PAGE \_\_\_\_.

Within thirty (30) days of the date any such instrument of conveyance is executed, Owner shall provide EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

8. Notice to Parties: Any notice, demand, request, consent, approval, or communication that either EPA or Owner desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

Joseph G. Pereni  
Wellsford, Inc.  
2498 Schuylkill Road  
Parkerford, PA 19457

To EPA:

Robert S. Hasson (3RC41)  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Phone: 215-814-2672

IN WITNESS WHEREOF, the Grantor herein, has executed the foregoing Declaration  
this \_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
COMMONWEALTH OF PENNSYLVANIA

:SS.

CHESTER COUNTY

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2005, personally came before  
me, the Subscriber, Notary Public for the Commonwealth and County aforesaid,  
\_\_\_\_\_, Declarant in the foregoing Notice of Access Obligations and Use  
Restrictions, and he acknowledged this Declaration to be his act and deed.  
GIVEN under my Hand and Seal of office the day and year aforesaid.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

EXHIBIT A  
[LEGAL DESCRIPTION OF PROPERTY]

**EXHIBIT B**  
**[MAP DEPICTING THE SITE]**

# Recticon/Allied Steel Site Map

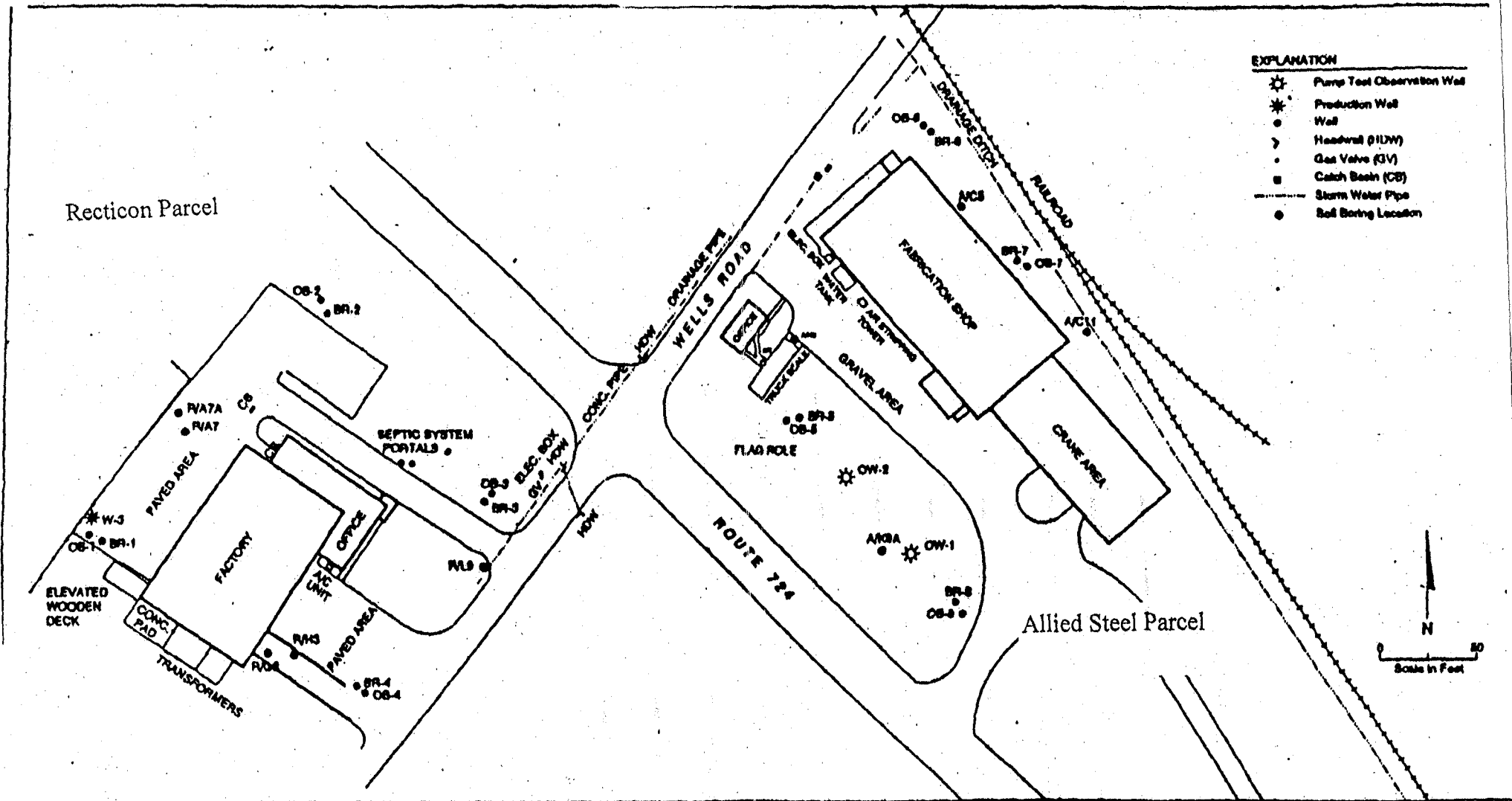


EXHIBIT C  
[CONSENT DECREE]